

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 1

IN THE MATTER OF	)	
	)	
	)	
DOWNEAST ENERGY CORP.	)	ADMINISTRATIVE ORDER
	)	ON CONSENT
	)	
Brunswick, ME	)	
	)	
Respondent.	)	Docket No. 09-024
	)	

I. JURISDICTION AND GENERAL PROVISIONS

1. This Order is issued pursuant to the authority vested in the U. S. Environmental Protection Agency ("EPA") by Sections 311(c), (e) and (m) of the Clean Water Act ("CWA"), 33 U.S.C. §§ 1321(c), (e) and (m) and Section 308 of the CWA, 33 U.S.C. § 1318.

2. This Order pertains to a substantial threat of a discharge of oil from the Downeast Energy Corp. ("Respondent") oil storage and transfer facilities ("Facilities") listed in Attachment A to this Order.

3. EPA has notified the States of New Hampshire and Maine of this action pursuant to Section 311(e)(1)(B) of the CWA, 33 U.S.C. § 1321(e)(1)(B).

4. The Oil Pollution Prevention Regulations, 40 CFR Part 112, establish procedures to prevent the discharge of oil from non-transportation-related onshore facilities into the waters of the United States or adjoining shorelines pursuant to the authority in Section

311(j) of the CWA, 33 U.S.C. § 1321(j). Owners or operators of onshore facilities that due to their location could reasonably be expected to discharge oil in “harmful quantities” into the waters of the United States must prepare and fully implement a Spill Prevention Control and Countermeasure Plan (“SPCC Plan”) for each facility under 40 C.F.R. § 112.3(a).

## II. FINDINGS OF FACT

1. The Facilities listed in Attachment A store and/or distribute petroleum products.
2. Each Facility listed in Attachment A contains at least 1,320 gallons of above ground oil-storage capacity.
3. Each of the Facilities listed in Attachment A is in close proximity to “navigable waters” of the United States as defined in Section 502(7) of the Act, 33 U.S.C. § 1362(7) and 40 C.F.R. § 110.1.
4. On December 18<sup>th</sup>, 2008 an EPA representative inspected the Springvale, ME Facility (the “Facility”) listed in Attachment A and observed that it was not in full compliance with the Oil Pollution Prevention Regulations.
5. EPA representatives inspected and/or obtained information related to the seven Facilities listed in Attachment A and concluded that they were not in full compliance with the Oil Pollution Prevention Regulations for at least one of the following reasons: inadequate secondary containment, failure to perform integrity testing, and failure to install overfill alarms on storage tanks.

### III. CONCLUSIONS OF LAW

1. The Facilities are all “onshore facilit[ies],” as defined in Section 311(a)(10) of the CWA, 33 U.S.C. § 1321(a)(10), and 40 C.F.R. § 112.2.

2. Respondent is a “person” as defined by Section 502(5) of the CWA, 33 U.S.C. § 1362(5).

3. As evidenced by the absence of full implementation of the Oil Pollution Prevention Regulations, there exists a substantial threat of a “discharge” as defined in Section 311(a)(2) of the CWA, 33 U.S.C. § 1321(a)(2), and 40 C.F.R. § 112.2, into navigable waters of the United States in violation of Section 311(b)(3) of the CWA, 33 U.S.C. § 1321(b)(3).

4. Based on the storage capacity of the Facilities, the quantity of oil which the Facilities may discharge is a harmful quantity within the meaning of Section 311(b)(3) of the CWA, 33 U.S.C. § 1321(b)(3) and 40 C.F.R. § 110.3(b).

5. The substantial threat of a discharge from the Facilities poses an imminent and substantial threat to public health or welfare of the United States, including fish and other wildlife, public and private property, shorelines, habitat, and other living and nonliving natural resources under the jurisdiction and control of the United States.

6. The actions required by this Order are necessary to protect the public health and welfare of the United States, including fish and other wildlife, public and private property, shorelines, habitat, and other living and nonliving natural resources under the jurisdiction and control of the United States.

7. The actions required by this Order are in accordance with the National Oil and Hazardous Substances Pollution Contingency Plan ("NCP") and are authorized by EPA pursuant to the authority granted in Section 311(c) and (e) of the CWA, 33 U.S.C. § 1321(c) and (e).

#### IV. ORDER

1. Based upon the Findings of Fact and Conclusions of Law set forth above, EPA hereby orders Respondent to comply with all requirements of this Order and the Oil Pollution Prevention regulations at 40 C.F.R. Part 112, promulgated under Section 311 of the federal CWA, 33 U.S.C. § 1321, and shall specifically perform the following actions:

A. Respondent shall complete all Facility upgrades and corrective actions as described in the Facility Upgrade Implementation Schedule (incorporated herein as Attachment B) ("Implementation Schedule"). Respondent shall submit evidence to EPA (e.g., copies of photographs, work summaries, cost documentation such as work orders, invoices, photographs or tanks dismantled or permanently closed for "permanently closed" facilities, etc.) by August 1, 2009 to document that all Facility upgrades described in the Implementation Schedule have been completed.

B. Respondent shall be in full compliance with the Oil Pollution Prevention regulations at all Facilities for which it has ownership and/or operational responsibilities by no later than July 1, 2009.

C. Respondent shall send reports to:

Alex Sherrin, On-Scene Coordinator  
U.S. Environmental Protection Agency - Region 1  
1 Congress Street  
Suite 1100 (Mail Code HBR)

Boston, MA 02114-2023

## V. MODIFICATIONS

1. If Respondent seeks permission to deviate from this Order, Respondent shall submit a written request to EPA for approval, outlining the proposed modification and its basis. Such written request will be submitted to:

Alex Sherrin, On-Scene Coordinator  
U.S. Environmental Protection Agency - Region 1  
1 Congress Street  
Suite 1100 (Mail Code HBR)  
Boston, MA 02114-2023

and

Jeffrey Kopf  
Senior Enforcement Counsel  
U.S. Environmental Protection Agency – Region 1  
1 Congress Street  
Suite 1100 (Mail Code SEL)  
Boston, MA 02114-2023

Such written request may be submitted by fax to Mr. Sherrin at (617) 918-0252 and to Mr. Kopf at (617) 918-0796.

2. Non-material modifications to any portion of the Order may be made in writing under signature of the Chief, Water Technical Unit, Office of Environmental Stewardship, EPA, Region 1.

3. Respondent shall immediately take all appropriate action to abate or minimize any discharge or substantial threat of a discharge if any incident during the actions conducted pursuant to this Order causes or may cause, either a substantial threat of a discharge or additional discharge of oil or hazardous substances from the Facility. In addition,

Respondent shall immediately notify Alex Sherrin at (617) 918-1252 and shall notify the National Response Center at telephone number (800) 424-8802.

#### VI. ENFORCEMENT: PENALTIES FOR NONCOMPLIANCE

1. Violation of or failure to comply with any of the provisions of the foregoing Order may subject Respondent to civil penalties of up to \$37,500 per day of violation or an amount up to three times the costs incurred by the Oil Spill Liability Trust Fund pursuant to Section 311(b)(7) of the Act, 33 U.S.C. § 1321(b)(7) and 40 C.F.R. Part 19.

2. If Respondent is unable to comply with the requirements of this Order, Respondent shall notify Alex Sherrin at EPA at (617) 918-1252 within 24 hours of becoming aware of such inability.

3. Nothing in this Order shall be construed to relieve Respondent of the requirements of the CWA or any other applicable requirements under federal, state or local law. EPA reserves the right to take, direct, or order all actions as necessary as authorized by law for any violation of this Order, and for future or past violations of the CWA.

#### VII. EFFECTIVE DATE


1. This Order shall be effective upon receipt by the Respondent

## VIII. SIGNATORIES

1. EPA and Respondent agree to the Findings of Facts, Conclusions of Law, and this Order.

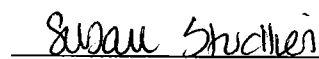
For the Respondent:

Downeast Energy Corp.

  
\_\_\_\_\_  
John Peters, President  
Downeast Energy Corp.

DATE: 5/29/09

For EPA:

  
\_\_\_\_\_  
Susan Studlien, Director  
Office of Environmental Stewardship  
EPA, Region 1

DATE: 06/03/09

**ADMINISTRATIVE ORDER ON CONSENT**

**ATTACHMENT A // LIST OF FACILITIES**

1. Downeast Energy  
288 River Road  
Springvale, ME 04083
2. Downeast Energy  
134 Manchester Road  
Windham, ME 04062
3. Downeast Energy  
14 Depot Street  
Kennebunk, ME 04043
4. Downeast Energy  
608 Elm Street  
Biddeford, ME 04005
5. Downeast Energy  
4 Paul Street  
Brunswick, ME 04011
6. Downeast Energy  
1464 Pond Road  
Mt. Vernon, ME 04352
7. Downeast Energy  
95 College Avenue  
Waterville, ME 04903



**ADMINISTRATIVE ORDER ON CONSENT**

**ATTACHMENT B // IMPLEMENTATION SCHEDULE**

<b>FACILITY</b>	<b>ACTION</b>	<b>COMPLIANCE BY</b>
288 River Road Springvale, ME	1. Install berm between loading rack and office building. 2. Install adequate security fencing.	7/1/2009
134 Manchester Rd. Windham, ME	1. Repair secondary containment berm.	6/1/2009
14 Depot Street Kennebunk, ME	1. Perform integrity testing on 150,000-gal tank. 2. Provide secondary containment for small heating oil and kerosene storage tanks.	7/1/2009
608 Elm Street Biddeford, ME	1. Provide secondary containment for off-loading area.	7/1/2009
4 Paul Street Brunswick, ME	1. Install overfill alarms on storage tanks. 2. Perform integrity testing on 14,000-gal tanks.	7/1/2009
1464 Pond Road Mt. Vernon, ME	1. Provide secondary containment for off-loading area and loading rack.	7/1/2009
95 College Avenue Waterville, ME	1. "Permanently close" facility as defined in 40 C.F.R. Section 112.2.	7/1/2009